

§ 252.21

up or delay occurring during or between voyages and the facts and circumstances relating to any such period.

(ii) *Region Director's finding.* The Region Director shall make a finding as to whether the period reported by the operator could have been avoided through the efficient and economical operation of the vessel and whether operating costs were reduced to a minimum in accordance with sound commercial practice. The Region Director shall, by means of a written report, promptly advise the operator and Contracting Officer of his finding.

(iii) *Contracting Officer's determination.* The Contracting Officer shall consider the Region Director's finding and shall determine what costs, if any, shall be subsidized during the period reported by the operator. The Contracting Officer shall promptly advise the operator of his determination in writing.

(b) *Nonsubsidized voyages in the U.S. foreign commerce.* (1) For any period of nonsubsidized service in the U.S. foreign commerce with respect to which the Board has granted prior authorization, a vessel shall go off subsidy after 2400 hours local time of the day of final discharge of cargo on the last subsidized voyage, or in the event the nonsubsidized voyage follows a subsidized period of reduced crew, idleness or lay-up, the vessel shall be deemed to be off subsidy at 0001 hours local time of the day following the day on which such period of reduced crew, idleness or lay-up terminates. The vessel shall continue in this nonsubsidized service until 2400 hours local time of the day of final discharge of the nonsubsidized cargo after which time the vessel will resume subsidized status. In the event the vessel makes consecutive nonsubsidized voyages during any such period of nonsubsidized service, it will remain in nonsubsidized status until completion of the final nonsubsidized voyage.

(2) For the purposes of meeting the requirements set forth in §§ 252.20(a) and 252.21, any such nonsubsidized voyage will be considered in the same manner as a subsidized voyage.

(3) Voyage reports shall be submitted upon the completion of each non-

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subsidized voyage in the same manner as specified in § 252.23(a) and shall clearly indicate that the voyage is non-subsidized.

[40 FR 43490, Sept. 22, 1975, as amended at 43 FR 4858, Feb. 6, 1978; 51 FR 40426, Nov. 7, 1986]

§ 252.21 Essential service requirement.

(a) *Essential service.* A vessel which is not subject to a charter, or a vessel subject to a charter which does not exceed 5 years duration and which may not be extended beyond 5 years duration by exercise of an option either within the charter or contained in a separate agreement, shall be deemed to be in an essential service, within the meaning of section 211(b) of the Act. The operator shall be entitled to the full amount of ODS payable under the operator's ODSA (less any reduction with respect to the carriage of cargo in the coastwise or intercoastal trades, as described in section 605(a) of the Act). A vessel subject to a charter which exceeds 5 years duration, or which may be extended beyond 5 years duration by exercise of an option (pursuant to provision of the charter or any separate agreement), shall not be deemed to be in an essential service unless such charter has been approved by the Maritime Administrator pursuant to paragraph (b) of this section.

(b) *Approval of charters.* Charters of vessels that exceed 5 years duration or that may be extended beyond 5 years duration by exercise of an option (pursuant to provision of the charter or any separate agreement) shall be submitted to the Maritime Administrator for review and approval at least 30 days prior to execution of such charter. Charters exceeding 5 years shall be approved if the Maritime Administrator finds that the vessel will probably be employed during a substantial portion of its economic life in carrying a significant volume of cargo in the U.S. foreign commerce. The Maritime Administrator shall base this finding on all relevant considerations, including but not limited to, the terms of the charter, the business of the charterer and the normal tendency for bulk operators to participate substantially in U.S. foreign commerce. When the Maritime Administrator has made this finding with respect to a vessel, its operations during

any period of subsidized service while subject to that charter shall be deemed to be operation in an essential service. The payment of ODS for such period shall not be reduced because of any amendment to this section or any other provision in this part 252 made prior to expiration of the charter. ODSA default provisions shall be applicable to noncompliance with this requirement. Charters that do not exceed 5 years and do not provide for extension beyond 5 years do not have to be submitted for approval by the Maritime Administrator, unless otherwise required by the ODSA. Charters previously approved by the Maritime Administration under existing procedures are deemed approved for purposes of this section.

(c) *Modification of requirement.* The Board shall have the authority to modify prospectively the provisions of this section as future circumstances may dictate. However, any such modification made by the Board shall apply only to charters that are executed on or after the date of the Board action, and the Board shall have discretion in determining whether such modification shall have general or limited applicability.

(d) *Applicability.* This is a general requirement applicable to the payment of ODS to operators of all types of bulk cargo vessels. The provisions of any ODS regulations pertaining specifically to dry bulk cargo vessels as may be finally adopted by the Maritime Administration and set forth in title 46, Code of Federal Regulations, shall govern as to dry bulk cargo vessels where such provisions are inconsistent with those contained in this section.

[45 FR 30442, May 8, 1980]

§ 252.22 Substantiality and extent of foreign-flag competition.

(a) *Type and tonnage groupings.* Foreign-flag competition shall be determined, as of January 1 of the year preceding January 1 of the subsidized year, by surveying a data file known as "Merchant Fleets of the World" that is maintained by MARAD. All foreign-flag bulk cargo vessels included in this data file are divided by type and category, and further subdivided by class. Classes include, but are not limited to

general tanker, chemical tanker, OBO, general dry bulk carrier and wood chip carrier. Each vessel class is further divided into deadweight tonnage ranges as follows:

(1) Range A-vessels of less than 25,000 DWT;

(2) Range B-vessels of 25,000 but less than 50,000 DWT;

(3) Range C-vessels of 50,000 but less than 100,000 DWT; and

(4) Range D-vessels of 100,000 or more DWT.

(b) *Competitive classes and range.* The following classes of foreign-flag vessels in the same tonnage range as the subsidized vessel shall be deemed to be competitive with the subsidized vessel:

Subsidized Vessels and Foreign-flag Class

(1) General tanker—general tanker

(2) Chemical tanker—general and chemical tankers

(3) OBO—general dry bulk carriers and tankers, OBO, bulk/oil, ore/oil and ore carriers

(4) General dry bulk carrier—general dry bulk carriers

(c) *Grouping and ranking competitive foreign-flags.* The foreign-flag vessels deemed to be competitive with the subsidized vessel shall be grouped by nationality and ranked according to the total deadweight tonnage under each foreign-flag.

(d) *Competitive foreign flag.* The competitive foreign flag shall be the flag with the greatest total tonnage in the range.

(e) *Largest foreign flag not competitor.* In the event that the Board believes that the competitive foreign-flag so determined pursuant to this § 252.22 is not a substantial competitor of any particular operator, the Board may determine the foreign-flag competition in a manner that more accurately reflects the true competition of the particular operator. In making this determination, the Board shall consider the written views of the operator and any other interested parties.

[40 FR 43490, Sept. 22, 1975, as amended at 45 FR 8024, Feb. 6, 1980; 51 FR 40426, Nov. 7, 1986]

§ 252.23 Financial and other reporting requirements.

(a) *Voyage report.* The operator shall submit a voyage report to the Director,